

EXHIBIT 6

ORIGINAL

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3
4
5 XEROX CORPORATION, :

6 Plaintiff :

7 Vs. :

CIVIL ACTION NO.

8 PHOENIX COLOR CORPORATION: L-02-CV-1734

9 and TECHNIGRAPHIX, INC., :

10 Defendants :

11 -----
12 Deposition of DONALD C. TYLER, taken on

13 Wednesday, March 5, 2003, at 1:28 p.m., at the

14 offices of Weinstock, Friedman & Friedman, P.A.,

15 Executive Centre, 4 Reservoir Circle, Suite 200,

16 Baltimore, Maryland, before Ilana E. Johnston,

17 R.P.R. and Notary Public.

18 -----
19
20 Reported by:

21 Ilana E. Johnston, R.P.R.

CRC-SALOMON

Baltimore, Maryland

Phone (410) 821-4888 Fax (410) 821-4889

1 Q. When?

2 A. I don't recall.

3 Q. Do you remember what the purpose of the
4 meeting was?

5 MR. GAUMONT: Objection to form.

6 A. Yes, to review and lower the current
7 lease prices for the 6180s that were currently
8 owned by TechniGraphix.

9 Q. Why did you want to do that?

10 A. To reduce the monthly lease expense.

11 Q. What was your monthly lease expense with
12 your Xerox equipment?

13 A. I don't recall right now, sir.

14 Q. What did you want to reduce it down to?

15 A. I don't recall.

16 Q. Was your monthly lease expense with
17 Xerox more than \$50,000 a month?

18 A. I don't recall.

19 Q. You have no idea sitting here today how
20 much you were spending in monthly lease payments
21 with Xerox; is that correct?

1 Exhibit No. 2, copy of business card, marked.)

2 Q. When did you utilize this card,

3 Mr. Tyler?

4 MR. GAUMONT: Objection. Foundation,
5 form.

6 Q. Do you remember?

7 A. After I was given the cards or once I
8 received my promotion.

9 Q. Which was when?

10 A. In 1997 when I was promoted to
11 vice-president, quality service management.

12 Q. If at any time you need to take a break,
13 just let me know.

14 A. Thank you.

15 Q. Do you have any cards, business cards,
16 with you today which indicate that you were the
17 chief operating officer of TechniGraphix?

18 A. No, sir, I don't.

19 Q. Did you ever have any cards printed up
20 indicating you were chief operating officer of
21 TechniGraphix?

1 MR. GAUMONT: Objection to form.

2 A. I don't recall.

3 Q. Do you recall ever handing out cards
4 indicating you were chief operating officer of
5 TechniGraphix?

6 A. I don't recall.

7 Q. Sitting here today it's your testimony
8 that during the year you were the chief operating
9 officer of TechniGraphix you have no recollection
10 of ever handing out a business card which
11 indicates you were chief operating officer of
12 TechniGraphix?

13 MR. GAUMONT: Objection. Compound,
14 form.

15 Q. Is that your testimony?

16 A. That's correct, sir.

17 MR. FRIEDMAN: Here's a stack of
18 documents we're going to go through. I would
19 like to start with -- let's do this, if you don't
20 mind. Let's mark this as an exhibit next on
21 behalf of Mr. Tyler.

1 A. Repeat the question, please.

2 Q. Would you have signed this lease if your
3 name was not printed out or written out above
4 where you signed?

5 MR. GAUMONT: Objection to form. Asked
6 and answered.

7 A. No, sir.

8 Q. No. Would you have signed this lease
9 agreement if the customer's name was not filled
10 out?

11 MR. GAUMONT: Objection to form.

12 A. Yes, sir.

13 Q. Why?

14 A. Because in my dealings with Xerox over
15 the period of time on numerous lease agreements
16 my concentration was that I was purchasing the
17 meat of the contract, which is the components of
18 the 6180 and the current lease breakdown and my
19 name and Bruce's name.

20 Q. So it didn't matter to you whose name
21 was in the space marked customer's legal name?

1 Q. Is that your testimony?

2 A. I concentrated on the meat of the
3 contract, sir.

4 Q. So that means you didn't care whether
5 the customer's name was filled out, correct?

6 MR. GAUMONT: Objection. Form,
7 characterization.

8 A. No, sir.

9 Q. You did care.

10 MR. GAUMONT: Objection. How many
11 questions you got out there?

12 Q. You did care.

13 A. Sir, your question was did I look to see
14 if the name was filled out. And I stated to you
15 that I concentrated solely on the components of
16 the contract, the lease agreement and the price.

17 Q. Was it important to you whether the name
18 of the customer was filled out when you signed
19 the lease?

20 MR. GAUMONT: Objection to form.

21 A. I did not look at the top of the

1 contract on every contract, sir.

2 Q. Was it important to you whether the name
3 of the customer was filled out? That's my
4 question.

5 MR. GAUMONT: Objection to form.

6 A. I can't answer that.

7 Q. I take it then it was not important to
8 you.

9 MR. GAUMONT: Objection.
10 Characterization, form.

11 A. Yes, sir, it was important to me.

12 Q. It was important to you, but you didn't
13 look to see whether it was filled out; is that
14 your testimony?

15 MR. GAUMONT: Objection to form.

16 A. Yes, sir.

17 Q. Okay. But sitting here today, you don't
18 have any recollection as to whether it was filled
19 out completely or not; is that correct?

20 A. No, sir, I don't recall.

21 Q. I will tell you now that the rest of the

Q. We're now looking at Exhibit 4, Bates No. 2504. I believe this is going to be a series of lease agreements all dated December the 10th, 1999, but we'll see in a second because we're going to go through each one.

A. Okay.

Q. The first one is Bates No. 2504. Is that your signature at the bottom of that lease agreement?

A. Yes, sir, it is.

Q. Do you have any recollection sitting here today whether this was completely filled out before you signed it?

MR. GAUMONT: Objection to form.

A. I can't recall.

Q. Okay. Do you have recollection sitting here today whether the words Don Tyler were printed above your signature under the customer's name?

A. I can't recall.

Q. Is there any reason why when you signed

1 that you didn't put in your title --

2 MR. GAUMONT: Objection. Form,
3 foundation.

4 Q. -- to your recollection?

5 MR. GAUMONT: Objection to form and
6 foundation.

7 A. I can't recall.

8 Q. Is there any recollection sitting here
9 today whether the customer's name was filled out
10 prior to your signing?

11 A. I can't recall.

12 Q. Okay. Bates No. 2505, lease agreement
13 dated December the 10th, 1999. Is that your
14 signature at the bottom of that lease agreement?

15 A. Yes, sir, it is.

16 Q. Do you have any recollection sitting
17 here today whether that lease agreement was
18 completely filled out when you signed it?

19 MR. GAUMONT: Objection to form.

20 A. I can't recall.

21 Q. Do you have any recollection sitting

1 here today whether the words under the customer
2 name were written in, those words being Don
3 Tyler, vice-president, Phoenix Color Corporation?

4 MR. GAUMONT: Objection to form.

5 A. I can't recall.

6 Q. Do you have any recollection today as to
7 whether the customer's name was written in before
8 you signed it?

9 A. I can't recall.

10 Q. I apologize that this is so repetitive,
11 but there's just no other way to do it.

12 Bates No. 2506, lease dated December
13 the 10th, 1999. Is that your signature at the
14 bottom of that lease agreement?

15 A. Yes, sir, it is.

16 Q. Do you have any recollection sitting
17 here today whether that lease was fully filled
18 out before you signed it?

19 A. I can't recall.

20 Q. Do you have any recollection sitting
21 here today whether under the customer's name the

1 words Don Tyler, vice-president, Phoenix Color
2 was written in before you signed it?

3 MR. GAUMONT: Objection to form.

4 A. I can't recall.

5 Q. Do you have any recollection sitting
6 here today whether the customer's name was filled
7 out before you signed it?

8 MR. GAUMONT: Objection to form.

9 A. I can't recall.

10 Q. Bates No. 2507. I'm going to speed this
11 up since the questions are the same, so let's see
12 if we can short-circuit this a little bit. Bates
13 No. 2507, Bates No. 2508, Bates
14 No. 2509, let's take those three. Is that your
15 signature at the bottom of each one of those
16 lease agreements?

17 A. Yes, sir, it is.

18 Q. Do you have any recollection sitting
19 here -- and they were all signed or dated
20 December the 10th, 1999, correct?

21 A. Yes, sir, they are.

1 Q. Do you have any recollection sitting
2 here today whether the lease agreements that
3 you've just identified were filled out before you
4 signed?

5 MR. GAUMONT: Objection to form.

6 A. I can't recall.

7 Q. Do you have any recollection sitting
8 here today whether your name under the customer
9 portion was filled in, Don Tyler, vice-president,
10 Phoenix Color Corporation?

11 MR. GAUMONT: Objection to form.

12 A. I don't recall.

13 Q. Do you have any recollection sitting
14 here today as to whether the customer's name,
15 Phoenix Color Corporation, was filled out before
16 you signed it?

17 MR. GAUMONT: Objection to form.

18 A. I don't recall.

19 Q. Okay. Bates No. 2510, lease
20 agreement. I note that there is no date. Would
21 you agree with me?

1 A. Yes, sir, there is no date.

2 Q. Is that your signature at the bottom of
3 that lease agreement?

4 A. Yes, sir, it is.

5 Q. Do you mind if I come around?

6 A. Yes.

7 Q. It's a little hard to bend over like
8 that.

9 A. If you'd stand on this side.

10 Q. Sure. Is that your better ear over
11 here?

12 A. Yes.

13 Q. Okay. Thank you. Do you have any
14 recollection sitting here today whether the lease
15 agreement that's Bates No. 2510 was filled out
16 before you signed your name at the bottom?

17 MR. GAUMONT: Objection to form.

18 A. I don't recall.

19 Q. Do you have any recollection sitting
20 here today whether the words Don Tyler were
21 written in under the customer's name before you

1 signed it?

2 A. I don't recall.

3 Q. Do you have any recollection sitting
4 here today whether the customer's name was filled
5 out before you signed it?

6 MR. GAUMONT: Objection to form.

7 A. I don't recall.

8 Q. When you signed this document, is there
9 any reason why you didn't fill in the date and
10 your title under the customer's name?

11 MR. GAUMONT: Objection. Compound,
12 form.

13 A. I don't recall.

14 Q. Bates No. 2511, lease agreement dated
15 December the 10th, '99. Is that your signature
16 at the bottom of that lease?

17 A. Yes, sir, it is.

18 Q. Do you have recollection sitting here
19 today whether that was completely filled out
20 before you signed it?

21 MR. GAUMONT: Objection to form.

1 A. I don't recall.

2 Q. Do you have any recollection sitting
3 here today whether your name was written in under
4 the customer portion, Don Tyler, vice-president,
5 Phoenix Color?

6 MR. GAUMONT: Objection to form.

7 A. I don't recall.

8 Q. Do you have any recollection sitting
9 here today whether the customer's name was filled
10 in, Phoenix Color Corporation?

11 MR. GAUMONT: Objection to form.

12 A. I don't recall.

13 Q. Bates No. 2512, lease dated December the
14 10th, '99. Is that your signature at the bottom?

15 A. Yes, sir, it is.

16 Q. Do you have any recollection sitting
17 here today whether this lease was completely
18 filled out before you signed it?

19 MR. GAUMONT: Objection to form.

20 A. I don't recall.

21 Q. Do you have any recollection sitting

1 here today whether your name was written in with
2 the title at the bottom, Don Tyler,
3 vice-president, Phoenix Color?

4 MR. GAUMONT: Objection to form.

5 A. I don't recall.

6 Q. Do you have any recollection sitting
7 here today whether the customer's name was filled
8 in under the lease agreement, Phoenix Color
9 Corporation?

10 MR. GAUMONT: Objection to form.

11 A. I don't recall.

12 Q. Bates No. 2513, lease dated
13 December 10, '99. Is that your signature at the
14 bottom?

15 A. Yes, sir, it is.

16 Q. Do you have any recollection sitting
17 here today whether this was completely filled out
18 before you signed it?

19 MR. GAUMONT: Objection to form.

20 A. I don't recall.

21 Q. Do you have any recollection sitting

1 here today whether your name was written out, Don
2 Tyler, under the customer, with the title
3 vice-president, Phoenix Color?

4 MR. GAUMONT: Objection to form.

5 A. I don't recall.

6 Q. Do you have any recollection sitting
7 here today whether the name Phoenix Color
8 Corporation was filled out as it is here where it
9 says customer legal name?

10 A. I don't recall.

11 Q. Bates No. 2514, lease dated
12 December 10, '99. Is that your signature at the
13 bottom?

14 A. Yes, sir, it is.

15 Q. Do you have any recollection sitting
16 here today whether this was filled out before you
17 signed it?

18 MR. GAUMONT: Objection to form.

19 A. I don't recall.

20 Q. Do you have any recollection sitting
21 here today whether your name was written in under

1 the customer name, Don Tyler, with title
2 vice-president, Phoenix Color?

3 MR. GAUMONT: Objection to form.

4 A. I don't recall.

5 Q. Do you have any recollection sitting
6 here today whether the customer legal name,
7 Phoenix Color Corporation, was on the lease when
8 you signed it?

9 A. I don't recall.

10 Q. Bates No. 2515, no date. Is that your
11 signature at the bottom of that lease agreement?

12 A. Yes, sir, it is.

13 Q. Do you have any recollection as to
14 whether this was completely filled out before you
15 signed it?

16 A. I don't recall.

17 Q. Do you have any recollection whether
18 your name under customer name, Don Tyler, was
19 written in?

20 MR. GAUMONT: Objection to form.

21 A. I don't recall.

1 Q. Do you have any recollection whether the
2 customer legal name, Phoenix Color Corporation,
3 was written in as it's shown here?

4 A. I don't recall.

5 Q. Bates No. 2516, lease dated
6 December 10, '99. Is that your signature at the
7 bottom?

8 A. Yes, sir, it is.

9 Q. Do you have any recollection whether
10 this was filled out as it is today before you
11 signed it?

12 MR. GAUMONT: Objection to form.

13 A. I don't recall.

14 Q. Do you have any recollection whether
15 your name, Don Tyler, was written in at the
16 bottom with the title vice-president, Phoenix
17 Color before you signed it?

18 MR. GAUMONT: Objection to form.

19 A. I don't recall.

20 Q. Do you have any recollection whether the
21 name Phoenix Color Corporation was on the lease

1 agreement where it says customer legal
2 name --

3 MR. GAUMONT: Objection to --

4 Q. -- before you signed it?

5 MR. GAUMONT: Objection to form.

6 A. I don't recall.

7 Q. Bates No. 2517, lease dated December the
8 10th. Is that your signature at the bottom?

9 A. Yes, sir, it is.

10 Q. Do you have any recollection whether
11 this was filled out as is before you signed it?

12 A. I don't recall.

13 Q. Do you have any recollection as to
14 whether the customer name at the bottom where it
15 says Don Tyler, title, vice-president, Phoenix
16 was filled out before you signed it?

17 MR. GAUMONT: Objection to form.

18 A. I don't recall.

19 Q. Looking at the customer legal name where
20 it says Phoenix Color Corporation, do you have
21 any recollection whether that was filled out

1 before you signed it?

2 A. I don't recall.

3 Q. Bates No. 2518, lease dated
4 December 10, '99. Is that your signature at the
5 bottom?

6 A. Yes, sir, it is.

7 Q. Do you have any recollection whether
8 that was filled out as is before you signed it?

9 MR. GAUMONT: Objection to form.

10 A. I don't recall.

11 Q. Do you have any recollection whether
12 your name at the bottom where it says in writing
13 Don Tyler and below that title, vice-president,
14 Phoenix was filled out before you signed it?

15 MR. GAUMONT: Objection to form.

16 A. I don't recall.

17 Q. Do you have any recollection whether the
18 customer legal name, Phoenix Color Corporation,
19 was filled out before you signed it?

20 A. I don't recall.

21 Q. Bates No. 2519, lease dated

1 December 10, '99. Is that your signature at the
2 bottom?

3 A. Yes, sir, it is.

4 Q. Do you have any recollection whether
5 that lease was filled out as is before you signed
6 it?

7 MR. GAUMONT: Objection to form.

8 A. I don't recall.

9 Q. Do you have any recollection whether
10 your name, Don Tyler, vice-president, Phoenix
11 Color, was filled out before you signed it?

12 MR. GAUMONT: Objection to form.

13 A. I don't recall.

14 Q. Do you have any recollection whether the
15 name Phoenix Color was in the box for customer
16 legal name before you signed it?

17 MR. GAUMONT: Objection to form.

18 A. I don't recall.

19 MR. FRIEDMAN: All right. Let's see
20 what's next here. Let's have this next packet
21 marked.

1 (Whereupon, Tyler Deposition
2 Exhibit No. 5, lease agreements, marked.)

3 Q. This has been marked as Exhibit 5, and
4 let's see if there's some way for me to speed
5 this up a little bit and try to group it all
6 together.

7 These are all copies, except for one
8 page, of leases which are dated December the
9 28th, 1999. Take a look at that entire packet
10 and tell me -- and just so we're clear, so I can
11 be clear, these are Bates Nos. 2520, 2521, 2522,
12 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530,
13 2531, 2532, 2533. Tell me if your signature
14 appears at the bottom of those leases.

15 A. Yes, sir, that's my signature.

16 Q. Okay. Now, take another look at this
17 and tell me whether you have any recollection
18 sitting here today whether these leases were
19 filled out and appear as they do today before you
20 signed them.

21 A. No, sir, I don't recall.

1 Q. No recollection. Okay. Take a look and
2 make sure or tell me whether you have any
3 recollection today regarding the title above your
4 signature on the leases. Was it filled out as it
5 appears today before you signed it?

6 MR. GAUMONT: Objection to form.

7 A. I don't recall.

8 Q. Take a look at the customer's name and
9 tell me if that was filled out as it appears
10 today before you signed it.

11 MR. GAUMONT: Objection to form.

12 A. I don't recall.

13 Q. Okay. Bates No. 2534 is a lease dated
14 December the 9th, 1999. Is that your signature
15 at the bottom?

16 A. Yes, sir, it is.

17 Q. Do you have any recollection sitting
18 here today whether this was filled out as it
19 appears today before you signed it?

20 MR. GAUMONT: Objection to form.

21 A. I don't recall.

1 Q. Do you have any recollection sitting
2 here today whether your name, Donald Tyler,
3 vice-president, Phoenix Color was filled out as
4 it appears today before you signed it?

5 MR. GAUMONT: Objection to form?

6 A. I don't recall.

7 Q. Do you have any recollection sitting
8 here today whether the name Phoenix Color
9 Corporation next to customer legal name was
10 filled out before you signed it?

11 MR. GAUMONT: Objection to form.

12 A. I don't recall.

13 MR. FRIEDMAN: Next exhibit.

14 (Whereupon, Tyler Deposition
15 Exhibit No. 6, lease agreements, marked.)

16 (Recess.)

17 Q. Tyler Exhibit 6.

18 MR. GAUMONT: Do you have a copy for me,
19 Sidney?

20 MR. FRIEDMAN: It's all in there.

21 MR. GAUMONT: Oh, it is?

1 A. Yes, sir, that's my signature.

2 Q. Those four pages contain your signature.
3 Now, I want you to tell me, take a look at these,
4 and tell me whether they were filled out as they
5 appear today before you signed them.

6 MR. GAUMONT: Objection to form.

7 A. I don't recall.

8 Q. Can you tell me whether your name, Don
9 Tyler, vice-president, Phoenix Color was written
10 in before you signed it as it appears on these
11 lease agreements?

12 MR. GAUMONT: Objection to form.

13 A. I don't recall.

14 Q. Can you tell me whether the name Phoenix
15 Color Corporation where it says customer's legal
16 name was written in in place of, it looks like,
17 TechniGraphix?

18 MR. GAUMONT: Objection to form.

19 A. I don't recall.

20 Q. Is that your writing at the top where it
21 says Phoenix Color Corporation with a circle

1 around it and initials next to it?

2 A. No, sir, it's not.

3 Q. Is that your initials next to Phoenix
4 Color Corporation?

5 A. No, sir, it's not.

6 Q. Don't recognize that as your
7 handwriting.

8 A. That's not my initials.

9 Q. That's not your initials.

10 A. No, sir, it's not.

11 Q. And you don't know whose initials they
12 are or whose handwriting that is?

13 A. No, sir, I don't.

14 Q. All right. Do me a favor and write out
15 your name please and your initials.

16 A. (Witness complies.)

17 MR. FRIEDMAN: Let's have this marked as
18 an exhibit next on behalf of Tyler, Exhibit
19 8.

20 (Whereupon, Tyler Deposition
21 Exhibit No. 8, Mr. Tyler's signature and

1 Q. Were you aware that TechniGraphix was
2 behind in its lease payments to Xerox?

3 A. Define what you mean.

4 Q. They were not current in their lease
5 obligations.

6 MR. GAUMONT: Objection. Foundation,
7 form.

8 A. That wasn't unusual though.

9 Q. That was not unusual? Why do you say
10 that?

11 A. Because it was the way, when
12 TechniGraphix, when we acquired it, was always on
13 a carry-over from month to month. So it was not
14 unusual to be behind with Xerox on their lease
15 payments from the original when Jack Tiner owned
16 them.

17 Q. Isn't that why you had discussions with
18 Xerox about lowering the monthly payments for the
19 Xerox equipment?

20 MR. GAUMONT: Objection to form.

21 A. The discussion with Xerox for lowering

1 the monthly payment was to lower the monthly
2 leases for the purpose of better utilizing the
3 equipment, not paying the current leases where
4 they stood, but to get a lower lease payment so
5 that we were making a better profit off of the
6 equipment based on the volume of work that was
7 being produced off of them.

8 Q. Wasn't it also coupled with the idea of
9 purchasing some additional equipment from Xerox?

10 A. That was the enticement I used to get
11 Xerox.

12 Q. Oh, okay. What equipment was that?

13 A. It was the Docu 100, four-color digital
14 sheet fed printer.

15 Q. But you ultimately didn't purchase it?

16 A. No, sir, we did not.

17 Q. So you enticed Xerox to lower their
18 lease payments by suggesting to them or leading
19 them to believe that you were going to purchase
20 that other equipment; is that correct?

21 MR. GAUMONT: Objection.

1 A. I don't recall.

2 Q. Well, you signed the contracts to
3 refinance and lower your lease payments in
4 December of '99. Would you agree with me? All
5 those lease documents we looked at were dated
6 December 10, '99, correct?

7 A. Yes, sir.

8 Q. So the conversations you had with
9 Mr. Rothstein and Mr. Nussbaum would have been
10 sometime prior thereto, correct?

11 MR. GAUMONT: Objection to form.

12 A. Yes, sir.

13 Q. Can we say that it was in the last
14 quarter of 1999 when you had those conversations?

15 MR. GAUMONT: Objection to form.

16 A. Yes, sir.

17 Q. Okay. Were those conversations
18 conducted in person between you, Mr. Rothstein
19 and Mr. Nussbaum?

20 A. Yes, sir.

21 Q. At the Hagerstown facility?

1 the monthly payment was to lower the monthly
2 leases for the purpose of better utilizing the
3 equipment, not paying the current leases where
4 they stood, but to get a lower lease payment so
5 that we were making a better profit off of the
6 equipment based on the volume of work that was
7 being produced off of them.

8 Q. Wasn't it also coupled with the idea of
9 purchasing some additional equipment from Xerox?

10 A. That was the enticement I used to get
11 Xerox.

12 Q. Oh, okay. What equipment was that?

13 A. It was the Docu 100, four-color digital
14 sheet fed printer.

15 Q. But you ultimately didn't purchase it?

16 A. No, sir, we did not.

17 Q. So you enticed Xerox to lower their
18 lease payments by suggesting to them or leading
19 them to believe that you were going to purchase
20 that other equipment; is that correct?

21 MR. GAUMONT: Objection.